

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2019

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.Nos.2351, 2352 and 2353 of 2016
and
C.M.P.Nos.16417 to 16419 and 16435 of 2016

National Insurance Co. Ltd.,
No.165, Nethaji Road,
Manjakuppam, Cuddalore.

.. Appellant in
all the appeals

vs.

1.V.Abirami
2.K.Vempu
3.V.Kannan
4.The Managing Director,
TSTC (Coimbatore) Ltd.,
No.37, Mettupalayam Road,
Coimbatore - 641 043.

.. Respondents in
C.M.A.No.2351 of 2016

1.R.Mahalakshmi
2.K.Vempu
3.V.Kannan
4.The Managing Director,
TSTC (Coimbatore) Ltd.,
No.37, Mettupalayam Road,
Coimbatore - 641 043.

.. Respondents in
C.M.A.No.2352 of 2016

1.Sulochana Ramachandiran
2.P.Ramachandiran
3.R.Sathiya Bala
4.R.Pushpambigai
5.R.Mahalakshmi
6.K.Vempu
7.V.Kannan
8.The Managing Director,
TSTC (Coimbatore) Ltd.,
No.37, Mettupalayam Road,
Coimbatore - 641 043.

.. Respondents in
C.M.A.No.2353 of 2016

Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 30.08.2013 made in M.C.O.P.Nos.1123, 1124 and 1125 of 2011 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Cuddalore.

For Appellant : Mr.S.Arun Kumar
in all the appeals

For Respondents : Ms.Ramya V.Rao for R1
in C.M.A.Nos.2351 and 2352
of 2016
for R1 to R5
in C.M.A.No.2353 of 2016
Mr.V.Udhayakumar for R4
in C.M.A.Nos.2351 and 2352
of 2016
for R8 in C.M.A.No.2353 of 2016
Others - No appearance
in all C.M.As

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Considering the commonality of the issue involved in these appeals, they have been taken up together and disposed of by this common order.

2.We are dealing with a case of collision between the car and the Transport Corporation bus. On 15.12.2010, when the claimants were travelling in the car bearing Reg.No.TN 51 P 9090, it colluded with the Transport Corporation bus bearing Regn.No.TN 38 N 1507 and in that accident, they sustained injuries. The claimants filed claim petitions in M.C.O.P.Nos.1123 to 1125 of 2011 and the Tribunal awarded Rs.15,000/-, Rs.2,51,500/- and Rs.48,26,390/- respectively. Aggrieved against the same, these appeals have been filed.

3.Insofar as C.M.A.No.2351 of 2016 is concerned, the Tribunal awarded Rs.15,000/- and insofar as C.M.A.No.2352 of 2016, a sum of Rs.2,51,500/- has been awarded. These two cases are involving the injuries sustained by the passengers travelling in the car. In C.M.A.No.2353 of 2016, the deceased suffered fatal injury and therefore, the Tribunal awarded Rs.48,26,390/- along with interest. In this case, the claimants are the parents and three unmarried daughters. Insofar as C.M.A.Nos.2351 and 2352 of 2016 are concerned, the quantum of compensation fixed by the Tribunal is not seriously disputed as against the liability. Therefore, we are concerned with the question of liability insofar as the appeals in C.M.A.Nos.2351 and 2352 of 2016 and the quantum of compensation in

C.M.A.No.2353 of 2016.

4.Learned counsel appearing for the appellant insurance company would submit that the quantum of compensation has been wrongly fixed by the Tribunal. The Tribunal adopted '17' multiplier, by fixing the age of the deceased at 28 years, who was working as a Teacher in the Panchayat Union School, Kumaramangalam and arrived the monthly income at Rs.20,725/- as per Ex.P19 - pay certificate. The future prospects have been wrongly taken into consideration and 1/4th deduction has been wrongly made as against 50%. Further, the learned counsel submitted that in the claim petition filed by the petitioner in M.C.O.P.No.407 of 2011, the award was only as against the eighth respondent herein, which has become final inter se parties. Therefore, in this case, the order of the Tribunal would require interference by fixing the liability on the eighth respondent. Learned counsel made this submission without prejudice to the contention that it is only the eighth respondent, who is responsible.

5.Learned counsel appearing for the claimants would submit that on the question of liability, it is for the Court to decide as to whether the appellant is responsible or the eighth respondent. Even if the negligence is contributory, there need not be of much interference with the quantum, though there may be a case with respect to deduction made by the Tribunal. Learned counsel would fairly submit that the amount fixed by the Tribunal insofar as C.M.A.No.2353 of 2016 is concerned can be reduced to Rs.33,35,874/- as per the calculation provided. This can be done by fixing the deduction at 50% as against 1/4th fixed by the Tribunal.

6.Learned counsel appearing for the Transport Corporation would submit that the case involving M.C.O.P.No.407 of 2011 has to be looked at differently. In that case, the appellant has not been arrayed as party respondent. Therefore, the appeal will have to be dismissed by fixing the responsibility and liability on the appellant as against the eighth respondent.

7.On the question of liability, we find that it is a case of contributory negligence. After going through the relevant records, it is seen that unfortunately before the Tribunal in M.C.O.P.No.407 of 2011, the appellant was not a party. However, the eighth respondent cannot wriggle out of its liability, having suffered an award, which has become final inter se between the said respondent and the claimant in M.C.O.P.No.407 of 2011. After all, we are dealing with the same occurrence. Same logic can be applied to the appellant also, being not a party. Therefore, we are inclined to fix the liability by apportioning it between the appellant on the one hand and the eighth respondent on the other hand. Accordingly, we fix the

contributory negligence on the part of the appellant and the eighth respondent at 50% each.

8. Having fixed the negligence proportionately between the appellant and the eighth respondent, the appeals filed C.M.A.Nos.2351 and 2352 of 2016 are accordingly disposed of.

9. Coming to appeal in C.M.A.No.2353 of 2016, we find that there is some force in the submission made by the learned counsel appearing for the appellant. The Tribunal, in our considered view, committed an error in making deduction of 1/4th as against 50%, as repeatedly held by the Apex Court including the Constitution Bench judgment in National Insurance Company Limited Vs. Pranay Sethi and Others ((2017) 16 SCC 680). We also find that the calculation given by the learned counsel appears to be fair and reasonable. After all, the proceedings are summary in nature and what is important is the just and proper compensation to be paid to the claimants. Thus the entitlement of payment under relevant heads has to be seen from the point of view of the total compensation. Taking into consideration the fact that claimants are both parents and three unmarried sisters, we find that the compensation fixed at Rs.33,35,874/- is a fair one. Accordingly it is fixed in the following manner:

Head	Amount Awarded by the Tribunal	Amount awarded by this Court
Loss of Dependency	Rs.47,56,390/-	Rs.31,70,874/-
Love and affection	Rs. 50,000/-	Rs. 1,25,000/-
Loss of estate	--1	Rs. 15,000/-
Funeral expenses	Rs. 20,000/-	Rs. 15,000/-
Transportation charges	--	Rs. 10,000/-
TOTAL	Rs.48,26,390/-	Rs.33,35,874/-

10. With the above modification, C.M.A.No.2353 of 2016 stands allowed. This amount will have to be paid proportionately at 50% each both by the appellant and the eighth respondent. The modified compensation amount shall be apportioned amongst the claimants as ordered by the Tribunal.

11. The compensation amount awarded by the Tribunal in C.M.A.Nos.2351 and 2352 of 2016 and the compensation amount as modified by this Court in C.M.A.No.2353 of 2016 along with proportionate interest shall be deposited, less the amount, if any, already deposited, to the credit of M.C.O.P.Nos.1123, 1124 and 1125 of 2011 respectively on the file of the Motor Accidents

Claims Tribunal (Principal District Judge), Cuddalore within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw their respective shares.

12. In the result, C.M.A.Nos.2351 and 2352 of 2016 are disposed of and C.M.A.No.2353 of 2016 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

mmi

To

1. The Managing Director,
TSTC (Coimbatore) Ltd.,
No.37, Mettupalayam Road,
Coimbatore - 641 043.

2. The Principal District Judge
(Motor Accidents Claims Tribunal),
Cuddalore.

3. The Record Keeper,
V.R. Section, High Court, Madras.

+3 Ccs to Mr.S.Arun Kumar, Advocate sr 9898, 9899, 9900.

+6 Ccs to Mr.A.N.Viswanatha Rao, Advocate sr 9229 & 9231.

C.M.A.Nos.2351, 2352 and
2353 of 2016

NRL (CO)
SP (09/04/2019)

WEB COPY